BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL ANTHONY	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 265,870 & 265,871
PSI GROUP, INC.	)	
Respondent	)	
AND	)	
	)	
CHUBB INDEMNITY INSURANCE COMPANY and	)	
ST. PAUL FIRE & MARINE INSURANCE CO.	)	
Insurance Carriers	)	

ORDER

Respondent and St. Paul Fire & Marine Insurance Company (St. Paul) appeal the July 25, 2001 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

Docket No. 265,870 is a claim for an April 20, 2000 accident when Chubb Indemnity Insurance Company (Chubb) was respondent's workers compensation insurance carrier. Docket No. 265,871 is a claim for a February 20, 2001 accident for which St. Paul was the insurance carrier. Both claims are for left knee injuries. Claimant was employed by respondent on both of the dates of accident alleged.

At the July 22, 2001 preliminary hearing the primary issue before the Judge was whether claimant had sustained a new work-related injury on February 20, 2001, or whether it was instead the natural and probable result of the earlier April 20, 2000 accident. In the July 25, 2001 preliminary hearing Order, Judge Sample awarded claimant medical treatment benefits and ordered St. Paul to pay the costs of that treatment.

St. Paul contends Judge Sample erred. It argues that claimant did not sustain a new work-related accident on February 20, 2001 as the aggravation was a natural and probable consequence of the April 2000 accident, or else the incident was merely normal activity of day-to-day living. St. Paul requests the Board to reverse the preliminary hearing Order or assess the costs of claimant's benefits against Chubb.

Chubb concurs with St. Paul's argument that claimant's injury is not compensable. But if it is found to be compensable, then Chubb contends St. Paul should be responsible for providing claimant with medical treatment benefits as it argues claimant sustained a new accidental injury on February 20, 2001.

In his brief to the Board, claimant contends that he suffered a new work-related accident on February 20, 2001, and that the ALJ's Order should therefore be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

Claimant initially injured his left knee at work on April 20, 2000 when he struck it against the bumper of his vehicle. Claimant again experienced pain and his knee locked on February 20, 2001 when he attempted to get up from his chair at work. Although claimant now needs medical treatment, both insurance carriers contend that if the claim is compensable the other carrier should be responsible for claimant's workers compensation benefits.

There is no dispute that claimant's April 20, 2000 accident arose out of and in the course of his employment. However, Chubb disputes that claimant's present need for medical treatment is the result of that accidental injury. Chubb argues that claimant suffered a subsequent injury which relieves it of liability. Conversely, St. Paul contends that the February 20, 2001 incident was either a natural consequence of the earlier injury or that it is not an accidental injury that arose out of and in the course of employment with respondent.

The first dispute is which insurance carrier should be responsible for paying claimant's workers compensation benefits. That dispute would be resolved by determining the appropriate date or dates of accident. But date of accident is not an issue listed in K.S.A. 44-534a as jurisdictional and does not otherwise raise an issue that the Judge exceeded her jurisdiction.[1] Clearly, the Judge did not exceed her jurisdiction.

> Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.[2]

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[1] *See* Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

[2] Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

The Board was presented with a similar issue in Ireland[3] where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for preliminary hearing benefits, the Board said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. Kuhn v. Grant County, 201 Kan. 163, 439 P.2d 155 (1968); Hobelman v. Krebs Construction Co., 188 Kan. 825, 366 P.2d 270 (1961).

The Board is unaware of any other provision in the Workers Compensation Act that purports to give the Board jurisdiction to review a preliminary hearing order for redetermining the liability among multiple insurance carriers. Therefore, the issue of whether there was one accident or two is dismissed.

The second issue is whether a knee injury suffered while getting up from a chair is an injury caused by the employment. St. Paul also argues that it should not, in any event, be responsible for the medical care ordered by the ALJ. St. Paul contends it is not because getting up from a chair is a normal activity of day-to-day living.

K.S.A. 44-508(d) defines "accident" as:

> an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

K.S.A. 44-508(e) defines "personal injury" and "injury" as:

> "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as

[3] Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,441 & 234,974 (Feb. 1999).

> a result of the natural aging process or by the normal activities of day-to-day living.

It is clear from the record, and the Board finds, that claimant suffered an injury in the course of his employment on February 20, 2001.

In Demars,[4] the Supreme Court stated:

> It has long been the rule that injury to a worker by a strain sustained in performing the usual tasks in the usual manner may constitute an accident within the meaning of the worker's compensation act even though there be no outward and discernable force to which the resultant disability can be traced. . . . We note under the definition of accident it is not necessary that an accident be accompanied by a manifestation of force, and it may refer to a series of events. Under the workers' compensation act any lesion in the physical structure of a worker causing harm may be a personal injury if it occurs under the stress of usual labor.

However, in Martin,[5] the Court of Appeals addressed an injury which occurred in a way similar to the injury in this case. There the Court found:

> Considering the history of claimant's back problems, it is obvious that almost any everyday activity would have a tendency to aggravate his condition, *i.e.*, bending over to tie his shoes, getting up to adjust the television, or exiting from his own truck while on a vacation trip. This is a risk that is personal to the worker and not compensable.

In this case, getting up from a chair was a part of claimant's usual job. Respondent correctly asserts that it can also be a regular part of normal day-to-day living. K.S.A. 44-508(e), as amended, which defines "injury" excludes "normal activities of day-to-day living" from being found to have been caused by the employment.

The Appeals Board has struggled with this 1993 addition to the definitions statute. The conclusion reached is that the Legislature intended to codify and strengthen the holdings in Martin and Boeckmann.[6] Claimant's injury in this case is distinguishable from both Martin and Boeckmann. Although claimant had a preexisting knee condition, it had not been symptomatic for some time before getting out of the chair on February 20, 2001. Also, the medical evidence shows not only that a preexisting ligamentous condition

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[4] Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 379, 573 P.2d 1036 (1978).

[5] Martin v.U.S.D. No. 233, 5 Kan. App. 2d 298, 300, 615 P.2d 168 (1980).

[6] Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

contributed, but most likely, the prior work-related injury of April 20, 2000 likely did as well. Furthermore, the Court in Boeckmann distinguished cases in which "the injury was shown to be sufficiently related to a particular strain or episode of physical exertion" to support a finding of compensability.[7] The Appeals Board concludes that the Legislature did not intend for the "normal activities of day-to-day living" to be so broadly defined as to include injuries caused by the strain or physical exertion of work.[8]

In this case, claimant was in the course of employment at the time of the accident. Furthermore, the injury was not from a risk that was solely personal to the claimant. Accordingly, if the February 20, 2001 incident was a new and distinct accident, which is an issue the Board does not reach, then Judge Sample was correct in holding that the injury arose out of and was directly caused by claimant's employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample, dated July 25, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

c: Clark H. Davis, Attorney for Claimant
Bart E. Eisfelder, Attorney for Respondent & Chubb Indemnity Ins. Co.
Patricia A. Wohlford, Attorney for Respondent & St. Paul Fire & Marine Ins. Co.
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[7] *Id* at 737.

[8] *See, e.g.*, Turley v. State of Kansas, WCAB Docket No. 247,457 (Nov. 1999); Longoria v. Wesley Rehab Hospital, WCAB Docket No. 220,244 (June 1997); Devine v. Rainbow Baking Co., WCAB Docket No. 202,860 (April 1996); Loader v. Medicalodges, Inc., WCAB Docket No. 192,396 (Feb. 1995); Munoz v. Frito-Lay, Inc., WCAB Docket No. 183,437 (April 1994).